



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9611621

Date: OCT. 16, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a process engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition and dismissed a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue his process engineering and project management work "in construction and operation of processing facilities in the [redacted] industries." He asserted that he plans "to support the establishment of new facilities" in the "[redacted] industries. In addition, the Petitioner noted that he is "currently employed in a full-time position with [redacted] as a Process Engineering Specialist with a dual role as project manager. [redacted] has specifically hired me to strengthen the technical capabilities in their [redacted] Office with regard to [redacted] projects."⁴ The Petitioner further stated:

I am now leading the process design and project management for the contract that [redacted] has with [redacted]. The scope of the contract is to provide a basic engineering design package that supports [redacted]'s demonstration facility that will be built in China.

....

... They have contracted with [redacted] to prepare the design specifications for all associated equipment that support the [redacted] reactors. In that regard, I have been personally responsible for the design of utility systems, tankage, control strategies, safety systems, facility integration, plot plan development, and supervision of the design team in [redacted]

The Petitioner maintains on appeal that his proposed endeavor is aimed at advancing and strengthening "the technical capabilities of [redacted] facilities by utilizing his skills and long-term experience to support the establishment of new facilities in these industries." He contends that

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about this position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

his undertaking involves “the development and construction of future facilities internationally and particularly in the United States.”

The record includes information about manpower shortages in the floating production storage and offloading (FPSO) industry, the costs for U.S. Forces to maintain the security of [redacted] in the [redacted] mass layoffs in the [redacted] industry, the consequences relating to Venezuela’s loss of [redacted] workers, a projected shortage of workers in the U.S. [redacted] industry, staffing problems attributable to low [redacted] prices, labor capacity strains on [redacted] construction markets, and micro [redacted] plants in the [redacted]. In addition, the Petitioner provided articles discussing a sustainable recovery in the [redacted] market, the mass departure of [redacted] professionals in the [redacted] industry, the effect of industry layoffs on recruiting new talent, [redacted] production’s impact on U.S. national security interests, [redacted]’s announcement to construct a demonstration plant that uses bio-fermentation to convert [redacted] to ethanol, the future of the [redacted] industry, the expansion of [redacted]’s [redacted] in Indonesia, and [redacted]’s export of [redacted] to Europe. He also offered information about the generation gap in the [redacted] industry, the industry’s rising number of retirements, the outlook in the floating production industry, [redacted] prices as a major determinant of employment growth, the overabundance of [redacted] in the [redacted] and ways companies are managing and utilizing the extra supply, a projected recovery in the [redacted] industry, and the operations of [redacted] [redacted] (the company which acquired [redacted]). The record therefore shows that the Petitioner’s proposed work as a process engineer and project manager has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appeal brief, the Petitioner asserts that his proposed endeavor advances the infrastructure of the U.S. [redacted] industry. He contends that with “more [redacted] being produced and sold by the United States,” our country is positioned “to better compete at an international level.” The Petitioner further maintains that his involvement in building new facilities “benefits our economy and worldwide position in the [redacted] industry.” He also argues that “whether he builds facilities in the [United] States or internationally,” his undertaking stands to “bring more work and profits to our national, state, and city econom[ies].” Additionally, the Petitioner claims that “[h]e is typically involved with projects that have a capital cost between \$50M and \$10B” and that “[s]ince these are very large facilities, they will have an impact on the local economy in [redacted] as well as nationally.” Furthermore, the Petitioner states that his proposed work “benefits our environment” and offers “relief of the amount of [redacted] being pumped in the [redacted]”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable process engineering and project management services for his employer and its clients, he has not offered sufficient information and

evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and its clientele to impact the process engineering field, his industry, or the environment more broadly at a level commensurate with national importance.

While the Petitioner asserts that the national importance of his endeavor is evident from the size of the facilities for which he provides project management services, he has not demonstrated that the economic implications of these facilities would be attributable to the Petitioner's projects to an extent that his proposed work holds national importance. Here, the Petitioner has not shown that the wider economic effects he claims are implications of his specific proposed endeavor to provide process engineering services for his employer's clients. Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.